

MEMORANDUM

TO: Docket Control

FROM: Robin Mitchell, Legal Division Director

CC:

DATE: March 8, 2023

RE: AU-00000E-17-0079

Attached please find Commissioner Kevin Thompson's response to the Ethics Complaint submitted by Mr. Abhay Padgaonkar. Also attached is the Original and the Amended Complaint.

RRM:cls

Robin Mitchell
Chief Counsel & Legal Division Director
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

RE: New York Financial Community Visit

March 1, 2023

The following is provided in response to the February 2023 Ethics Complaint (“complaint”) submitted by Mr. Padgaonkar. The complaint(s) as submitted provides no evidence that any Arizona Corporation Commission (“ACC”) Ethics Rules were actually violated. The unfounded complaint is based on speculation, conjecture, and a fundamental misunderstanding/mischaracterization of the ACC’s Ethics Rules. To be clear, there was no violation of the ACC Ethics Rules as the complaint speculates as will be further discussed below:

On January 19-20, 2023, I attended a joint National Association of Regulatory Utility Commissioners-American Gas Association New York Financial Community meetings with individuals who work for national lending organizations, along with Commissioners from three other states. The discussions are part of an ongoing education effort to learn from other state regulators, better understand the lender perspective as subject matter experts, and for participants to share general perspectives on regulatory topics such as grid stability and decarbonization.

I attended in my individual capacity as a Commissioner. I did not position my comments as a representation of the full ACC. My travel expenses related to the trip (totaling approximately \$1,200) were paid out of my official ACC office travel account.

No docket matters active before the Commission were discussed, and certainly no discussions in violation of ex parte occurred. No meetings with entities regulated before the ACC took place, and no meetings or conversations with individuals required to be registered as a “lobbyist” under the ACC’s Code of Ethics Rule 5.2 occurred. There was never any indication any person present in the meetings had the intent to influence any particular outcome or decision of the ACC.

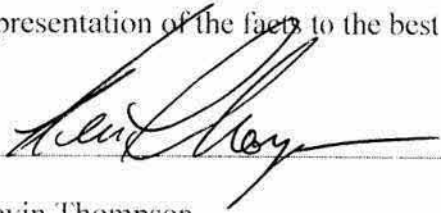
If one were to follow the complaint’s faulty logic and overly broad interpretation of Rule 5.2, almost any person or individual “interested” in the outcome of Arizona energy policy/decisions would have to be registered as a lobbyist with the ACC, regardless of whether they individually advocate before the Commission, regardless of whether they are advocating for

a specific policy outcome, and regardless of whether or not they meet lobbyist statutory definitions found in A.R.S. § 41-1231, et seq.

Further, Rule 5.2 provides for a “subject matter experts” exception. The lenders hosting the conversations were all subject matter experts in energy finance and lending. No individuals meeting the statutory definition of “lobbyist” found in A.R.S. § 41-1231, et seq. were present. Given that no specific project or projects were discussed and that lenders did not advocate or attempt to “influence any decision, legislation, policy, or rulemaking within the Commission’s jurisdiction”, Rule 5.2 was never invoked, and certainly not violated.

I believe this complaint is an unfortunate attempt to weaponize the ACC’s Ethics Code and an attempt to restrict the ability of Commissioner’s to seek comprehensive and fully informed perspectives impacting the important work of the ACC. I have been transparent with the ACC, even immediately requesting this review. Accordingly, I believe the facts demonstrate the ethics policy has not been violated, and the complaint accordingly should be dismissed.

I, Kevin Thompson, swear that the information in my sworn statement above is a complete representation of the facts to the best of my knowledge.


Kevin Thompson

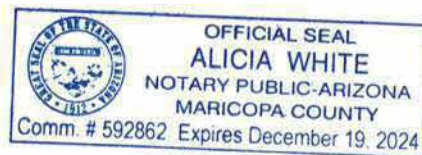
3/1/2023
Date

State of Arizona

County of MARICOPA

On this 1st day of March, 2023, before me personally appeared
KEVIN THOMPSON (name of signer), whose identity was proven to me on
the basis of satisfactory evidence to be the person whose name is subscribed to this document,
and who acknowledged that he/she signed the above document.

Alicia Martinez
Notary Public
ALICIA WHITE



February 8, 2023

Robin R. Mitchell
Chief Counsel/Legal Division Director
Arizona Corporation Commission
1300 W. Washington Street
Phoenix, AZ 85007-2996

Re: Ethics Complaint Against Commissioner Kevin Thompson

Dear Ms. Mitchell:

It is my understanding, based on Rule 8.1 of the Commission's Code of Ethics, that as the Chief Counsel you are also the Commission's Ethics Officer. As per Rule 8.1, I am submitting in writing a formal complaint alleging a violation of ethics rules related to Commissioner Kevin Thompson's New York meeting with the financial institutions as per his Facebook and Twitter posts.¹ As a gravely concerned ratepayer, I am asking you to: a) report the complaint to the Commissioners and the Executive Director, b) independently investigate this ethics complaint, and c) promptly make the findings of your investigation public.

It is indisputable that the financial institutions with whom Commissioner Thompson met represent an industry whose interests will be affected by Commission decisions. These financial institutions maintain a market in the securities of the regulated utilities or their parent companies, such as APS (Stock: PNW), TEP (Stock: FTS), and SW Gas (Stock: SWX), manage or co-manage a public offering of securities, and provide and receive compensation for investment banking services. These financial institutions list the regulated utilities as their clients, have beneficial ownership of the common stock, and disclose a significant financial interest in the stock of the regulated utilities or their parent companies.²

A higher ROE and allowance of SCRs, which these institutions desired in the 2019 APS rate case, would have resulted in more than half a billion dollars coming out of captive ratepayers' pockets over three years. These financial institutions vehemently criticized the Commission's decision to reject the rate increase by lowering APS's authorized ROE and by disallowing the SCRs.³ It is clear that these investors only have an interest in ensuring higher utility profits and stock prices on the backs of the ratepayers.

Commissioner Thompson's statements to "better the regulatory environment" and his vow that he is "no longer going to allow the regulatory environment in Arizona to be dead last in the nation" can mean only one thing: Higher authorized ROE and imprudent expenses included in the rates resulting in significantly higher rates for the ratepayers — while the utility profits and stock prices skyrocket, directly benefitting the financial institutions he met with and the utility investors and management whose bidding Commissioner Thompson is doing.

The financial institutions Commissioner Thompson met with: a) represent an industry whose interests will be affected by Commission decisions and b) whose intent is to influence any decision, legislation, policy, or rulemaking within the Commission's jurisdiction. **As per Rule 5.2, a Commissioner shall not knowingly communicate with any person, representing an industry or public service corporation whose interests**

¹ "Kevin Thompson for Corp Comm" at: <https://www.facebook.com/ThompsonforCorpComm> and <https://twitter.com/VoteKThompson/status/1616873069901156354?ext=HHwWhMDUpLfpPAsAAAA>

² APS Response to Commissioner Kennedy at: <https://docket.images.azcc.gov/E000016073.pdf?i=1633709496418>

³ Guggenheim Investment Report at: <https://docket.images.azcc.gov/E000016064.pdf?i=1633709496418>

will be affected by Commission decisions, and whose intent is to influence any decision, legislation, policy, or rulemaking within the Commission's jurisdiction, unless that person has registered as a lobbyist with the Commission prior to making or attempting to make such communication.

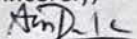
It does not appear that any of the financial institutions or their representatives have registered as a lobbyist.⁴ Commissioner Thompson has not only knowingly communicated but has bragged about it on social media. **Therefore, Commissioner Thompson appears to be in clear violation of Rule 5.2 and his New York trip must be thoroughly investigated by the Commission.** This is especially important because there are two ongoing major rate cases (APS and TEP) — with *ex parte* invoked long before his trip — that are together seeking nearly \$600 million in annual rate increases from the ratepayers. In addition to the Commission's ethics investigation, per Rule 9.1, I will also ask you or the Commissioners to refer the matter to the Attorney General to investigate "knowing or corrupt misconduct."

If these rate increases are granted with Commissioner Thompson's affirmative vote under the guise of making the regulatory environment more "constructive" in Arizona, they will devastate hundreds of thousands of vulnerable citizens and communities in Arizona that are already reeling from the global pandemic and high inflation. Commissioner Thompson has struck a Faustian bargain to sell out — rather than protect — the very people that elected him.

On January 27th, I docketed my letter calling for an ethics investigation as a public comment, including a full page of troubling questions that Commissioner Thompson's New York trip raised.⁵ I hope your ethics investigation will also answer all those questions and whether any prohibited communications occurred requiring Commissioner Thompson's immediate recusal. It would also be helpful to know if you provided training to Commissioner Thompson to ensure his familiarity with the Commission's Code of Ethics, applicable Arizona laws related to the conduct of public officials, public record laws, and open meeting laws, as required by Rule 8.1.

PS: Although I am emailing this ethics complaint to you, for public transparency, I am simultaneously filing this letter into the ongoing APS (E-01345A-22-0144) and TEP (E-01933A-22-0107) rate case dockets.

Sincerely,



Abhay Padgaonkar

Consumer Advocate

abhay@pobox.com | (602) 628-1234

⁴ ACC Lobbyist Portal at: <https://efiling.azcc.gov/public-records/lobbyist/search>

⁵ "Commissioner Thompson's 'Wolves of Wall Street' Junket Screams for an Ethics Investigation" at: <https://docket.images.azcc.gov/E000023860.pdf>

Acknowledgement Certificate

Type of Document: Ethics Complaint Against Commissioner Kevin Thompson

Document Date: 2/21/2023

Number of Pages: 2

Names of any additional signers not named in the Notary Certificate:

State of Arizona)

)

County of Maricopa)

On this 21 day of Feb [Month], 20 23 [Year], before me personally

appeared Abhay M. Padgaonkar [Name of Signer], whose identity was proven

to me on the basis of satisfactory evidence to be the person who he or she claims to be, and

acknowledged that he or she signed the above/attached document.

(Seal)



Yanira Ruiz

Notary Public [Notary Public Signature]

February 27, 2023

Robin R. Mitchell
Chief Counsel & Legal Division Director
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Re: Amended Ethics Complaint Against Commissioner Kevin Thompson

Dear Ms. Mitchell:

It is my understanding, based on Rule 8.1 of the Commission's Code of Ethics, that as the Chief Counsel you are also the Commission's Ethics Officer. I am amending the written ethics complaint previously submitted to you under oath alleging violation of ethics rules related to Commissioner Kevin Thompson's New York meetings with the financial institutions as per his Facebook and Twitter posts.¹ As a gravely concerned ratepayer, I am asking you to: a) report the complaint to the Commissioners and the Executive Director, b) independently investigate this ethics complaint, and c) promptly make the findings of your investigation public. Please note that the public filing I made to the ACC on January 27, 2023, titled *Comm. Thompson's 'Wolves of Wall Street' Junket Screams for an Ethics Investigation*,² including the facts, evidence, and the 27 questions on page 2, shall be deemed to be incorporated into this amended ethics complaint by reference.

Violation of Rule 5.2 of the Ethics Code Governed by A.R.S. § 41-1231, et seq

It is indisputable that the financial institutions Commissioner Thompson met with represent an industry whose interests will be affected by Commission decisions. These financial institutions maintain a market in the securities of the regulated utilities or their parent companies, such as APS (Stock: PNW), TEP (Stock: FTS), and Southwest Gas (Stock: SWX), manage or co-manage a public offering of securities, and provide and receive compensation for investment banking services. These financial institutions list the regulated utilities as their clients, have beneficial ownership of the common stock, and disclose a significant financial interest in the stock of the regulated utilities or their parent companies.³

These investors only have an interest in ensuring higher utility profits and stock prices on the backs of the ratepayers. A higher ROE and allowance of SCRs, which these institutions desired in the 2019 APS rate case, would have resulted in more than half a billion dollars coming out of captive ratepayers' pockets over three years. These financial institutions vehemently criticized the Commission's decision to reject the rate increase by lowering APS's authorized ROE and by disallowing the SCRs. Guggenheim, with whom Commissioner Thompson met, wrote: "... the Arizona Corporation Commission is now confirmed to be the single most value destructive regulatory environment in the country as far as Investor Owned Utilities are concerned."⁴

Commissioner Thompson's social media statements to "better the regulatory environment" and his vow to the financial institutions that he is "no longer going to allow the regulatory environment in Arizona to be dead last in the nation" reiterate Guggenheim's tirade word for word. They can mean only one thing: Higher authorized ROE and imprudent expenses included in the rates, resulting in significantly higher rates for the ratepayers — while the utility profits and stock prices skyrocket, directly benefiting the financial institutions he met with, utility investors, and utility management with millions at stake through stock options.

¹ "Kevin Thompson for Corp Comm" at: <https://www.facebook.com/ThompsonforCorpComm> and <https://twitter.com/VoteKThompson/status/1616873069901156354?ctx=HHwWhMDUpblfpPAsAAAA>

² "Comm. Thompson's 'Wolves of Wall Street' Junket Screams for an Ethics Investigation" at: <https://docket.images.azcc.gov/E000023860.pdf>

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⁴ Guggenheim Investment Report at: <https://docket.images.azcc.gov/E000016064.pdf?i=1633709496418>

The financial institutions Commissioner Thompson met with: a) represent an industry whose interests will be affected by Commission decisions and b) whose intent is to influence any decision, legislation, policy, or rulemaking within the Commission's jurisdiction. As per Rule 5.2, a Commissioner shall not knowingly communicate with any person, representing an industry or public service corporation whose interests will be affected by Commission decisions, and whose intent is to influence any decision, legislation, policy, or rulemaking within the Commission's jurisdiction, unless that person has registered as a lobbyist with the Commission prior to making or attempting to make such communication.

It does not appear that any of the financial institutions or their representatives have registered as lobbyists.⁵ According to 12NEWS, "Thompson does not dispute he met directly with people not registered as lobbyists representing industries that benefit from his decisions."⁶ As a former lobbyist⁷ for Southwest Gas from 2011-2015, Commissioner Thompson of all people must know better. And yet, he has not only knowingly communicated with people who should have registered as lobbyists but has bragged about it on social media. **Commissioner Thompson is in clear violation of Rule 5.2 (governed by A.R.S. § 41-1231, et seq) and his New York trip must be thoroughly investigated.**

Violation of A.A.C. R14-3-113 Governing Ex Parte Communications

This breach by Commissioner Thompson is especially important because there are two ongoing major rate cases (APS and TEP) — with *ex parte* invoked long before his trip — that are together seeking nearly \$600 million in annual rate increases from the ratepayers. If these rate increases were to be granted with Commissioner Thompson's affirmative vote under the guise of improving the regulatory environment for the utilities, they will devastate vulnerable citizens, businesses, schools, hospitals, government agencies, and communities across Arizona that are reeling from the global pandemic and high inflation. Commissioner Thompson has struck a Faustian bargain to sell out rather than protect — the very people that elected him.

The ACC's Ex Parte Rule section⁸ defines an ex parte communication as "written or oral communication between a decisionmaker and any person concerning the merits of contested proceeding or linesiting that does not occur in a public forum." It further states that ex parte communications are "governed by A.A.C. R14-3-113 and A.A.C. R14-3-220 of the Commission's Rules of Practice and Procedure." It goes on to require that a "Commissioner or Commission employee who receives an unauthorized communication must decline to receive such communication and if unsuccessful in preventing the communication must make the substance of the communication available in the public record of the case or proceeding."

A "spokesman" for Commissioner Thompson (identified by the KJZZ reporter as Ryan Anderson, working for Kevin Thompson) told KJZZ that "he did not discuss any matters that are pending with the Corporation Commission during the New York meetings."⁹ As per A.A.C. R14-3-113, I am demanding that the entire substance of the communication before, during, and after the New York meetings is made available in the public record in the pending APS and TEP rate case dockets so that the public, the parties, and the ALJs can decide any potential violations for themselves.

Further, ACC Ethics Code Rule 7.3 on ex parte states: "Any violation of this rule requires immediate recusal and participation from the matter by the Commissioner(s) that violated this rule." Commissioner Thompson is a decisionmaker who knowingly and actively engaged in unauthorized communication in a nonpublic forum

⁵ ACC Lobbyist Portal at: <https://efiling.azcc.gov/public-records/lobbyist/search>

⁶ "'It's unethical, that's for sure': Complaint filed against new Arizona Corporation Commissioner" at:

<https://www.12news.com/article/news/local/arizona/ethics-complaint-filed-against-arizona-corporation-commissioner-kevin-thompson/75-ab920dba-8ac9-4e6d-a195-c73352277a0f>

⁷ Arizona Secretary of State Lobbyist Record for Kevin Thompson at: https://apps.azsos.gov/scripts/Lobbyist_Search.dll/ZoomLOB?LOB_ID=3609011

⁸ ACC Ex Parte Rule and FAQs at: <https://azcc.gov/meet-the-commissioners/ex-parte-rule-and-faqs>

⁹ "Ethics complaint filed against new Arizona Corporation Commissioner Kevin Thompson" at: <https://kjzz.org/content/1839826/ethics-complaint-filed-against-new-arizona-corporation-commissioner-kevin-thompson>

with representatives of various financial institutions about the merits of contested proceedings¹⁰ when he promised them that "the Arizona Corporation Commission is no longer going to allow the regulatory environment in Arizona to be dead last in the nation." Commissioner Thompson has already told the utility investors in person that he has their back and that he's going to deliver for them. With that in mind, it would also be helpful to know if and when you provided training to Commissioner Thompson to ensure his familiarity with the Commission's Code of Ethics, applicable Arizona laws related to the conduct of public officials, public record laws, and open meeting laws, as required by Rule 8.1.

I am asking you to direct Commissioner Thompson to make the entire substance of the communication related to the New York meetings available in the public record in the ongoing APS and TEP rate case dockets. I am also demanding that either the Commission or the Presiding ALJs in these rate cases order Commissioner Thompson's immediate recusal for violation of ex parte rules and prohibit his participation in all the matters in which ex parte had been invoked.

Possible Violations of A.R.S. § 38-431.03 Governing Executive Sessions

Disturbingly, the 12NEWS story also reported that "the matter was scheduled to be discussed during a closed-door meeting on Thursday, according to Thompson." Why was the Commission as a whole seeking legal advice behind closed doors when an individual Commissioner has been accused of an ethics violation? While a public body may hold an executive session, it is only permitted for specific matters as specified in A.R.S. §§ 38-431.03(A)(1) through (7).¹¹ I question the use of an executive session for this matter, which is not a personnel or HR matter. An ethics complaint investigation against an individual commissioner is not specifically covered under the listed exceptions: "Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer."

Further, the ACC must include the possibility of an executive session in the meeting notice and agenda, the notice must include the statutory section authorizing the executive session, the agenda must provide a general description of the matters to be discussed or considered, the ACC must vote to enter an executive session, must have minutes or recordings of an executive session, and that no action is permitted and no votes are taken in an executive session.¹² It's not clear to me that as Chief Counsel you ensured that the Commission followed all these statutory protocols for Thursday's executive session if one occurred.

I also do not believe that your obligation as the Ethics Officer to report the complaint to the Commissioners and the Executive Director necessitates an executive session and a closed-door meeting outside of the public view. Also, as the Chief Counsel for the Arizona Corporation Commission whose salary is paid by the taxpayers, you are *not* a personal attorney representing or advising Commissioner Thompson.

Finally, I will advise the Commission to preserve minutes or recordings of all executive sessions related to this matter in case the attorney general decides to investigate alleged violations of A.R.S. §§ 38-431.03. Given previous shenanigans,¹³ I have very little faith in ACC's investigations. **Rule 9.1 states that violations of Arizona law by any Commissioner should be referred for review to the Attorney General. As such, I am asking you or any Commissioner to refer the matter to the Attorney General to investigate "knowing or corrupt misconduct" to ensure a thorough and unbiased investigation.**



Abhay Padgaonkar
Consumer Advocate
abhay@pobox.com | (602) 628-1234

¹⁰ 2022 APS Rate Case (Docket No. E-01345A-22-0144) and 2022 TEP Rate Case (Docket No. E-01933A-22-0107)

¹¹ A.R.S. §§ 38-431.03 at: <https://www.azleg.gov/ars/38/00431-03.htm>

¹² "Arizona's Open Meeting Law" p27-32 at: <https://des.az.gov/sites/default/files/media/Open-Meeting-Law-Training.pdf>

¹³ "Arizona regulators won't release 3rd-party audit of APS" at: <https://www.12news.com/article/news/investigations/eveteam-investigations/arizona-regulators-wont-release-3rd-party-audit-of-aps/75-442d459f-4a7f-4b17-b3a2-8a55b826ac59>

ARIZONA NOTARY ACKNOWLEDGMENT

State of Arizona

County of Maricopa

The foregoing instrument entitled Amended Ethics Complaint Against Commissioner Kevin Thompson was

acknowledged before me this 02, 27, 2023 (date) by

Abhay Padgaonkar (name of person acknowledged). The person has personally appeared before me and presented identification to establish his or identity as required by law.

(Seal)



A handwritten signature in black ink, appearing to be "CW", written over a horizontal line.

Signature of Notary Public